GAN AH CHOO

v.

CHUA PAN

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[ORIGINATING SUMMONS NO. 181/85]
1 JULY 1986

LAND LAW: *Caveat - Whether Registrar of Titles can re-register a caveat previously removed by him pursuant to notice under s. 326 National Land Code - Prohibition of fresh caveat on similar grounds - Section 329 amended by Act A587/84 effective on 25 March 1985.*

The issue in this case was whether a Registrar of Titles can re-register a caveat which had been previously removed pursuant to a notice under s. 326 of the National Land Code.

Held:

[1] Section 329 of the National Land Code in force at the relevant date did not prohibit the registration of fresh caveat on similar grounds as the former one which the Registrar had previously removed but instead restricted the class of wrong caveats only to those caveats which have been removed or refused by order of the Court.

[2] The Registrar was therefore acting lawfully when he made the memorial in the Register in respect of the fresh caveat. However, the Registrar is restrained from doing so now as s. 329 of the National Land Code has been amended by Act A587/87 with effect from 25 March 1985 to preclude the Registrar from entering fresh application for entry of private caveat based on similar grounds as the former one which he had previously removed.

[3] The application was dismissed and the Respondent's caveat was ordered to remain until further order by this Court.

[Application dismissed.]

Cases referred to:
K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors. [1959] 25 MLJ 257
Lim Kiat Moy v. Hamzah [1966] 2 MLJ 175
Arul Chandran v. Tara Rajaratnam [1979] 2 MLJ 172
Damodaran v. Vasudevan [1974] 1 MLJ 128
Hock Hin Bros. Sdn. Bhd. v. Low Yat Holdings Sdn. Bhd. [1984] 1 MLJ 92

Legislation referred to:
Land Code (Cap 138) ss. 171, 175, 176
National Land Code 1965, ss. 326, 327, 329.

For the plaintiff/applicant - Phua Jin Hock; M/s. Nordin & Phua
For the defendant/respondent - Yau Jiok Hua; M/s. Yau Jiok Hua & Co.

JUDGMENT

Wan Yahya J:

The issue in this originating summons pivots on an interesting question of law i.e., whether a Registrar of Titles can re-register a caveat which had been previously removed pursuant to a notice under s. 326 of the National Land Code.

The applicant in this case is the registered owner of a piece of land which she claimed was purchased on 10 January 1974 with monies provided by her son. Some time in 1982 a three storey building was erected on that land with funds allegedly furnished by the same son.

On 21 February 1984 the respondent (the applicant's husband) claiming that the land was purchased and built on with monies provided by him and not his son and that he had used her name merely as a trustee to hold the land on his behalf, lodged a private caveat on the said land. On 2 August 1984 the wife made an application for the removal of this caveat and it was accordingly removed by the Registrar after a lapse of one month from the date of the issue of notice to the husband under s. 326 of the National Land Code 1965.

The wife then entered into an agreement on 16 February 1984 for the sale of this land. Before the same could be completed in September 1984, the husband entered a fresh caveat on the land. The wife objected to the Registrar's decision in respect of this fresh entry but the latter maintained that he was entitled to do so and advised the wife to proceed by way of an application under s. 327 of the National Land Code - hence this application before this Court.

I am given to understand from the applicant's Counsel that he is at this stage challenging the administrative act of the Registrar only as a ground for his application; hence he has not made a reply to the respondent's allegations. In other words he is prepared to concede that this caveat could remain until the trial proper if he did not succeed in showing us that the fresh or subsequent caveat entered by the respondent is unlawful.

Counsel cited to this Court the case of *K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors.* [1959] 25 MLJ 257 in which Ong J (as he then was) opined that once a caveat had lapsed and a memorial is made by the registering authority it is extinguished forever. Counsel then referred to other cases as in *Lim Kiat Moy v. Hamzah* [1966] 2 MLJ 175, *Arul Chandran v. Tara Rajaratnam* [1979] 2 MLJ 172 and *Damodaran v. Vasudevan* [1974] 1 MLJ 128 in which the judgment of Ong J had been applied.

The respondent's Counsel cited the case of *Hock Hin Bros. Sdn. Bhd. v. Low Yat Holdings Sdn. Bhd.* [1984] 1 MLJ 92 wherein Edgar Joseph Jr. J in his judgment held that as the decision by Ong J was based on s. 175 of the former Land Code (Cap 138) the other decisions must be assumed to have been made *per incuriam*.

I find myself entirely in agreement with the learned Judge's views. Section 171 of Cap 138 reads:

> 171. (i) Except in the case of a caveat presented by the proper registering authority in accordance with s. 230(f) the caveatee may make application in writing to the proper registering authority to remove such caveat, and thereupon the proper registering authority shall serve notice in writing in the Form in Schedule XXXVII on the caveator requiring that the caveat be withdrawn within twenty-one days, and after twenty-one days from the date of the service of such notice at the address mentioned in the caveat the proper registering authority shall remove such caveat by making a memorial that the same is discharged unless he shall have been previously served with an order of the Court extending the time as herein provided.
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> (ii) Such caveatee shall in application give an address in the Federated Malay States at which notices and proceedings may be served.

Immediately after that section the framers of the Code went on to make provisions on matters pertaining to extension of time to a caveat; withdrawal of caveat and on the necessary memorial to be made not only by an order of Court but also by lapse of time. Section 175

then went on to spell out in explicit form the prohibition on further caveats followed by provision under the next section for compensation by person wrongfully lodging a caveat. Section 175 and 176 read as follows:

> 175. It shall not be lawful for the same person, or for anyone on his behalf or claiming through him, to present a further caveat in relation to the same matter, but nothing herein contained shall prejudice the right of the proper registering authority to present or continue any caveat under the powers vested in him by s. 230.
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> 176. Any person other than the proper registering authority presenting or continuing any caveat wrongfully and without reasonable cause shall be liable to make compensation to any person who may have sustained damage thereby.

The above provisions to my mind point out unmistakably to the intention of the legislature at that time not only to prohibit the registration of fresh caveat on similar grounds as the former one but also to expostulate any attempt at registration by a guileful caveator.

However, the corresponding provisions of s. 329 of the National Land Code in force at the relevant date did not include this prohibition but instead restricted the class of wrong caveats only to those caveats which have been removed or refused by order of the Court in the following terms:

> 329. (1) ....
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> (2) Where **the Court has ordered** the removal of any private caveat under s. 327, or has refused an application under sub-section (2) of s. 326 for an extension of time with respect to any such caveat or where the Registrar has removed any caveat pursuant to sub-section (3) of s. 326, the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based. (Emphasis is mine.)

I am aware that the above section has been amended by Act A 587/84 to preclude the Registrar from entertaining fresh application for entry of private caveat based on similar grounds as the former one which he had previously removed but that amendment only came into effect on 25 March 1985. The present application for fresh entry of caveat by the respondent, although based on similar grounds as the former application, was made some time in September 1984 when the amendment to s. 329 was not yet effective. The Registrar was therefore acting lawfully when he made the memorial in the register in respect of the fresh caveat, although he is restrained from doing so now.

As the parties had agreed that the merit of this application will depend on the issue of legality of the fresh caveat, the application in this case must fail. I therefore dismiss this application and order the caveat to remain until further order by this Court.

Also found at [1988] 1 CLJ 352